

CHAPTER 26

RESERVE COMPONENT SOLDIERS AND OPERATIONS

TYPES OF OPERATIONALLY DEPLOYED RC SOLDIERS.

The Army includes Reserve Component soldiers or units from either National Guards or the United States Army Reserve.

I. Army Reserve: The Army Reserve consists of units (almost exclusively combat support and combat service support units known as Troop Program Units) and individual soldiers (most of whom serve in a manpower pool known as the Individual Ready Reserve). Reserve soldiers and units normally serve under the U.S. Army Forces Command (FORSCOM). Some Reserve units serve as part of the U.S. Army Civil Affairs and Psychological Operations Command (USACAPOC).

II. National Guard: Each state and territory has a National Guard. Each state's National Guard consists of a variety of combat, combat support, or combat service support units, as well as a state/territorial headquarters. Under normal circumstances, these units report to the Governor of their state or territory. They may also have an association with other states' National Guard units or active component units with whom they mobilize. In addition to their service to the state, National Guard soldiers and units hold a dual status as Reserve soldiers in the United States Army. For that reason, National Guard soldiers may serve either in a "Federal" status like other reserve soldiers, or in a "State" status under the command of the Governor.

National Guard soldiers serving in their home state in such roles as disaster relief or control of civil disturbances typically serve in their state status. By regulation and policy, National Guard soldiers serving outside the United States must serve in their Federal status.

The distinction between state and federal status sometimes assumes critical legal importance. Unless ordered into federal service under Title 10 U.S. Code, National Guard soldiers serve under a state chain of command, with the Governor as commander in chief. The Uniform Code of Military Justice does not apply to soldiers on duty in a state status. Instead, state law provides for military justice. The *posse comitatus* act does not apply to National Guard soldiers in state service, which means they may then legally participate in some law enforcement activities.

When National Guard soldiers and units are ordered into Federal service, most of these distinctions disappear. As a result, their command, control and administration closely resemble that of mobilized reserve soldiers and units.

TYPES OF RESERVE/ARNG DUTY IN THE OPERATIONAL ENVIRONMENT

I. Reserve and National Guard soldiers and units may participate in operations under several different authorities. The list below summarizes some of the more likely ones.

- A. With consent: RC members may be ordered to active duty at any time with their consent (10 USC § 12301 (d)).
- B. 15 days annual duty: RC soldiers may be ordered to perform up to 15 days of active duty per year without their consent. Soldiers in RC units normally perform this duty together as Annual Training. (10 USC § 12301 (b)).
- C. Selective Mobilization: This authority exists for peacetime domestic mobilization to suppress insurrection, enforce Federal authority, or prevent interference with state or federal law. (10 USC § 331-333).
- D. Presidential Selected Reserve Call-up: Up to 200,000 RC soldiers may be involuntarily called to active duty for up to 270 days, for purposes related to external threats to U.S. security. The statute allows for call-up of units or individual soldiers not assigned to a unit. Sometimes, special units (referred to as "derivative UICs") may be created to

mobilize needed unit members without mobilizing entire units. Soldiers may not be retained under this authority for more than 270 days, including time spent on active duty prior to and after deployment. (10 USC § 12304).

E. Partial Mobilization: Upon presidential proclamation of a national emergency, up to 1 million RC soldiers may be involuntarily called to duty for up to 24 months. (10 USC § 12302 (a)).

F. Full Mobilization: Under public law or Congressional resolution, all remaining RC soldiers may be involuntarily ordered to active duty for the duration of the war or emergency plus six months. (10 USC § 12301 (a)).

II. Determining when a soldier's active duty terminates can be critically important. Some types of duty end by operation of law. For example, no authority exists to extend a 270 day Presidential Selected Reserve Call-up. Therefore, the command must either finish actions pertaining to such a soldier or initiate the soldier's continuation under other authority. Similarly, a unit present on a 15 day annual training tour cannot be retained involuntarily, even if its continued presence is essential to the success of a mission.

Whenever the imminent departure of an RC soldier or a unit could cause problems, military personnel specialists need to review the records involved to accurately determine when the active duty period ends. The legal advisor should review that determination carefully. For example, if a soldier has a tour end date on her initial orders, that date will control over subsequent orders issued by subordinate commands.

ADVERSE ACTIONS AGAINST DEPLOYED RC SOLDIERS

Mobilized RC soldiers in Federal service have rights and obligations comparable to an AC soldier. However, the JA advising commanders of these soldiers and units must take care to avoid some RC-specific problem areas.

A. Authority to take UCMJ action: Two points loom large when assessing the implications of UCMJ action against an RC soldier. They are personal jurisdiction over the RC soldier at the time of the offense, and personal jurisdiction over the RC soldier at the time of the UCMJ action.

1. Status at the time of the offense: In order to be subject to UCMJ liability, a soldier has to be in a Federal (**not** state) duty status at the time of commission of the offense. Proving this can sometimes pose problems. For example, consider urinalysis of a sample submitted shortly after the beginning of a soldier's tour of active duty. It may show ingestion of an illegal drug, but the command will likely need to prove that the soldier was in an active duty status at the time of drug ingestion.

2. Status at the time of the action: In order to take UCMJ action against an RC soldier, the soldier must be in a duty status. This makes it critically important that the command know when the soldier's active duty concludes. An RC soldier may be retained on active duty for court martial if action with a view toward court-martial is taken prior to the normal end of the soldier's period of active duty. An Active Component General Court-martial Convening Authority (GCMCA) can also order an RC soldier back to active duty for court-martial or Article 15 punishment under this authority. *See generally* AR 27-10, chapter 21.

In addition to determining duty status, these situations also call for a careful review of the RC soldier's orders. If a soldier is assigned to a command, there should be no problem. However, if orders specify that a soldier is attached to a command, counsel must ensure that the terms of the attachment vest UCMJ jurisdiction in the command. If they do not, the attachment command may contact the assignment command to request any necessary amendments.

3. The authority to retain or call back a soldier to AD for court martial does not apply to witnesses. In cases where RC soldiers will be needed as witnesses after their release from active duty, the command may contact the reserve soldier's chain of command to secure the witness' presence under other authority.

B. Administrative Actions: Administrative actions against a deployed RC soldier pose fewer jurisdictional issues than UCMJ actions, but must still be approached carefully.

1. Unlike UCMJ jurisdictional requirements, a soldier need not be in a duty status when committing misconduct subject to administrative action. However, the command must have authority to take the action. Here again, the RC soldier's orders require careful examination. Assigned RC soldiers generally fall under the command's administrative authority like any other soldier. However, attachment orders may reserve authority for administrative actions to the soldier's reserve chain of command.

2. Generally, AC regulations will apply to actions against RC soldiers assigned to an AC command. For example, administrative separation action against a mobilized soldier would proceed under AR 635-200 (the AC regulation) rather than AR 135-178 (the RC regulation). Sometimes the duration of a soldier's remaining active duty dictates the choices in this area. Considering the separation action above, what if the soldier has only a week of active duty left? The AC command may lack sufficient time to complete a separation (and, since there is no court martial contemplated, probably has no authority to extend the soldier on active duty). The better alternative may be to ensure the documentation is forwarded to the soldier's chain of command back home for appropriate action. With other actions, the AC chain of command processes the action to completion even after the RC soldier departs (For example, *see* AR 600-37, paragraph 3.4 (d), which allows completion of the letter of reprimand process after departure of a soldier from the command). Bottom line rule? Check the regulation involved carefully and determine its applicability when an RC soldier is involved.